



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2021-0692; FRL-9132-01-OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Clean Air Act, as amended (CAA or the Act), notice is given of a proposed consent decree in *Downwinders at Risk et al. v. Regan*, No. 21-cv-03551 (N.D. Cal). On May 12, 2021, Downwinders at Risk, Sierra Club, Center for Biological Diversity, Air Alliance Houston, Texas Environmental Justice Advocacy Services, Clean Wisconsin, Appalachian Mountain Club, Earthworks, Natural Resources Defense Council, and Environmental Defense Fund (Plaintiffs) filed a complaint in the United States District Court for the Northern District of California alleging that the Environmental Protection Agency (EPA or the Agency) failed to perform certain non-discretionary duties in accordance with the Act to take final action to approve or disapprove, in whole or in part, 32 state implementation plan submissions (SIPs) addressing interstate pollution transport for the 2015 ozone national ambient air quality standards (NAAQS) by statutory deadlines. The proposed consent decree would establish deadlines for EPA to act on these SIP submissions.

DATES: Written comments on the proposed consent decree must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2021-0692, online at <https://www.regulations.gov> (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action.

Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional

information on the rulemaking process, see the “Additional Information about Commenting on the Proposed Consent Decree” heading under the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov>, as there may be a delay in processing mail and faxes. Hand-deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

EPA continues to carefully and continuously monitor information from the CDC, local area health departments, and our federal partners so that we can respond rapidly as conditions change regarding COVID-19.

FOR FURTHER INFORMATION CONTACT: Rosemary E. Hambright, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone (202) 564-8829; email address hambright.rosemary.e@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Consent Decree

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2021-0692) contains a copy of the proposed consent decree.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number

then select “search.”

II. Additional Information about the Proposed Consent Decree

The proposed consent decree would establish deadlines for EPA to take action pursuant to CAA section 110(k) on certain SIP submissions addressing the requirements of CAA section 110(a)(2)(D)(i)(I), 42 U.S.C. 7410(a)(2)(D)(i)(I) (the good neighbor or interstate transport provision), to resolve a lawsuit filed by the Plaintiffs. Plaintiffs alleged that the EPA failed to perform certain non-discretionary duties in accordance with the Act to take final action to approve or disapprove, in whole or in part, SIPs addressing interstate pollution transport for the 2015 ozone national ambient air quality standards (NAAQS) by statutory deadlines for the following states: Alabama, Arizona, Arkansas, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New York, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, West Virginia, Wisconsin, and Wyoming.

Pursuant to CAA section 110(k), 42 U.S.C. 7410(k), SIP submissions are deemed complete by operation of law 6 months after receipt by EPA. EPA must approve or disapprove, in whole or in a part, SIP submissions within 12 months of the SIP submissions being deemed complete.

The proposed consent decree would require the EPA, pursuant to CAA section 110(k)(2)-(4), 42 U.S.C. 7410(k)(2)-(4), to take final action to approve or disapprove, in whole or in part, the portion of 2015 ozone NAAQS SIP submissions addressing the good neighbor provision from the 32 states listed above.

Under the terms of the proposed consent decree, no later than April 30, 2022, EPA shall sign a notice of a final rule to approve, disapprove, conditionally approve, or approve in part and conditionally approve or disapprove in part, the 2015 ozone NAAQS interstate transport SIP submissions from Alabama, Arkansas, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New

Jersey, New York, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, West Virginia, and Wisconsin. However, under the proposed consent decree, if EPA proposes to disapprove any of these SIP submissions and proposes a 2015 ozone NAAQS interstate transport federal implementation plan for such states by February 28, 2022, then EPA shall take final action on those SIP submissions by December 15, 2022.

In addition, under the terms of the proposed consent decree, no later than April 30, 2022, EPA shall sign a notice of a final rule to approve, disapprove, conditionally approve, or approve in part and conditionally approve or disapprove in part, the 2015 ozone NAAQS interstate transport SIP submission from Hawaii. Also, under the terms of the proposed consent decree, no later than December 15, 2022, EPA shall sign a notice of a final rule to approve, disapprove, conditionally approve, or approve in part and conditionally approve or disapprove in part, the 2015 ozone NAAQS interstate transport SIP submissions from Arizona, California, Montana, Nevada, and Wyoming.

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

III. Additional Information about Commenting on the Proposed Consent Decree

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2021-0692, via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written

comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

Gautam Srinivasan,

Associate General Counsel.

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